IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16982 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIMALIYA VIBHAG KELAVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16982 of 2003

MR MUKESH R SHAH for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 22/12/2003

ORAL JUDGEMENT

Leave to make corrections in the cause title. State of Gujarat (Notice to be served through the Secretary Education Department, Gandhinagar) to be shown as respondent No.1 and Commissioner of Schools and Mid-day Meals shall be shown as respondent No.1A.

2. Rule. Ms. Nandini Joshi, learned AGP is directed to waive the service of Rule for the respondent-authorities.

When the matter is called out, Ms Nandini Joshi, learned AGP states that although the Government Pleader's office has instructions to appear in the matter, they have not received any instructions from the office of the Commissioner of Schools and Mid-day Meals.

The learned counsel for the petitioner submits that in view of a large number of students (being 95) are required to be accommodated in one division of Std.X, the matter brooks no delay and, therefore, the petition may be taken up for final hearing immediately.

In the facts and circumstances of the case, it appears to the Court that the matter needs urgent attention and is, therefore, taken up for final disposal today. It appears to the Court that in view of the order that the Court proposes to pass by taking up the petition for immediate disposal, no irreversible harm will be done to the respondents or to the public interest as the Court proposes to remand the matter back to the Commissioner of Schools and Mid-day Meals.

3. In the facts and circumstances of the case and particularly in view of the fact that the school run by the petitioner-trust has been permitted to have two divisions of Std.VIII and two divisions of Std.IX and the permission to open the second division of Std.IX was granted with effect from June, 2002, the permission to open the second division of Std.X ordinarily ought to have been granted. The reasons given in the impugned order dated 22.9.2003 at Annexure "H" to the petition do not appear to be such as to justify refusal of the permission to open a second division of Std.X. The number of students enrolled in Std.X is 95 for the year 2003-04. 74 students were attending the class when the District Education Officer inspected the school.

4. It appears to the Court that when the authorities have already granted permission to the petitioner to have two divisions of Std.VIII and two divisions of Std.IX and one division of Std.X and the permission to open the second division of Std.IX was given with effect from June, 2002, the refusal of the permission to open a second division for Std.X appears to be arbitrary, particularly when not only there are 95 students enrolled in Std.X (with only ten repeaters) and as many as 74 of

them were found to be attending the school on the date of inspection.

5. In view of the above discussion, the petition is allowed and the impugned order dated 22.9.2003 (Annexure H) is quashed and set aside and the matter is remanded back to the Commissioner of Schools and Mid-day Meals to reconsider the matter in light of the observations made in this judgment. If the Commissioner of Schools is not inclined to grant the application, an opportunity of hearing shall be given to the petitioner-management. If the petitioner school is a grant-in-aid institution, it will be open to the respondents to require the petitioner-management to follow in case of all future appointment of teachers the resolution/s of the Gujarat Secondary Education Board regarding selection and appointment of teachers in secondary schools and this may be made a condition for grant of permission to open additional divisions.

This exercise shall be completed within a period of two weeks from the date of receipt of writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)
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